

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

| | | |
|--------------------------|---|--------------------------|
| UNITED STATES OF AMERICA | § | |
| | § | CRIMINAL NO. 4:02cr88(8) |
| v. | § | |
| | § | |
| ANDRE RETAY TONEY | § | |

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the above-referenced criminal action, this court having heretofore referred the request for modification of Defendant's supervised release to the United States Magistrate Judge for proper consideration. The court has received the report of the United States Magistrate Judge pursuant to its order. Defendant having waived allocution before this court as well as his right to object to the report of the Magistrate Judge, the court is of the opinion that the findings and conclusions of the Magistrate Judge are correct.

It is, therefore, **ORDERED** that the Magistrate Judge's Report is **ADOPTED** as the opinion of the court. It is further **ORDERED** that Defendant's supervised release is hereby **REVOKED**. It is further **ORDERED** that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of 20 months to be served consecutively to any state sentence being served, with 28 months of supervised release to follow, except if Defendant fully pays his \$1,825 fine during his period of incarceration, then any term of supervised release will be extinguished. The court further recommends that Defendant' term of imprisonment be carried out in the Bureau of Prisons facilities in Seagoville, Texas, if appropriate.

Defendant is **ORDERED** to pay a fine of \$1,825. The fine is due immediately, payable by cashier's check or money order, to the United States District Court and forwarded to the United States District Clerk's Office, P. O. Box 570, Tyler, Texas 75710. Any amount that remains unpaid when Defendant's supervision commences is to be paid on a monthly basis at a rate of at least 10% of Defendant's gross income, to be changed during supervision, if needed, based on Defendant's changed circumstances, pursuant to 18 U.S.C. § 3572(d)(3). Additionally, 100% of receipts received from gifts, tax returns, inheritances, bonuses, lawsuit awards, and any other receipt of money (to include, but not limited to, gambling proceeds, lottery winnings, and found money) must be paid toward the unpaid fine balance within 15 days of receipt. The fine is payable by cashier's check or money order made out to the United States District Court and forwarded to the Fine and Restitution Section, U.S. Courts, P. O. Box 570, Tyler, Texas 75710. Interest is waived.

If the fine is not fully paid while Defendant is incarcerated, Defendant shall serve 28 months of supervised release. Within 72 hours of release from the custody of the Bureau of Prisons, Defendant shall report in person to the probation office in the district to which Defendant is released and to comply with the following conditions.

While on supervised release, Defendant shall not commit another federal, state, or local crime, and shall comply with the standard conditions that have been adopted by the court, and shall comply with the following additional conditions:

Defendant shall provide the probation officer with access to any requested financial information for purposes of monitoring his efforts to obtain and maintain lawful employment.


Defendant shall participate in a program of testing and treatment for drug abuse, under the guidance and direction of the U.S. Probation Office, until such time as Defendant is released from the program by the probation officer.

Under the guidance and direction of the U.S. Probation Office, Defendant shall participate in any combination of psychiatric, psychological, or mental health treatment as deemed appropriate by the treatment provider.

Defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

IT IS SO ORDERED.

SIGNED this the 28th day of December, 2010.



RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE